



April 19, 2024

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

By Email: Secretarys-Office@SEC.GOV

Re: Petition for Rulemaking Under Section 13(f) of the Securities and Exchange Act of 1934, File No. 4-___

Dear Ms. Countryman:

The Society for Corporate Governance (“Society”), the National Investor Relations Institute (“NIRI”), and NYSE Group, Inc. (“NYSE”) jointly petition the U.S. Securities and Exchange Commission (“SEC”) to request that the SEC initiate a rulemaking to modernize its Section 13(f) disclosure rules by reducing the outdated 45-day filing period to no more than five business days to improve the utility of 13F filings for market participants and increase investor confidence in the integrity of the U.S. securities markets.

This Petition follows our earlier Petition for Rulemaking on the same topic, which was submitted

in 2013.¹ The Society,² NIRI,³ and the NYSE⁴ together represent the interests of more than 2,400 public companies.

Since our 2013 Petition, there has been growing support among market participants for modernizing the SEC's Section 13(f) disclosure rules and improving the timeliness of these disclosures. In 2020, retail shareholders, institutional investors, research firms, issuers, and industry groups submitted hundreds of comment letters⁵ that conclusively documented the value of 13F transparency; many of those letters called for reducing the 13F filing period.⁶ We urge the SEC to respond to this broad base of support and move forward with a modernization initiative within the scope of its authority under Section 13(f).

¹ See NYSE Euronext, the Society of Corporate Secretaries & Governance Professionals (now known as the Society for Corporate Governance), and the National Investor Relations Institute, Petition for Rulemaking Under Section 13(f) of the Securities and Exchange Act of 1934 ("2013 Petition"), File No. 4-659 (Feb. 1, 2013), available at: <https://www.sec.gov/files/rules/petitions/2013/petn4-659.pdf>

² Founded in 1946, the Society for Corporate Governance ("Society") is a professional membership association of approximately 3,700 corporate and assistant secretaries, in-house counsel, outside counsel, and other governance professionals who serve approximately 1,700 entities, including approximately 1,000 publicly held companies of almost every size and industry. Society members are responsible for supporting the work of corporate boards of directors and the executive managements of their companies on corporate governance and disclosure matters.

³ Founded in 1969, the National Investor Relations Institute ("NIRI") is the professional association of corporate officers and investor relations consultants responsible for communication among corporate management, shareholders, securities analysts, and other financial community constituents. NIRI is the largest professional investor relations association in the world with members representing over 1,500 publicly held companies and \$12 trillion in stock market capitalization.

⁴ Founded in 1792, the New York Stock Exchange is the world's largest equities exchange, with 2,400 listed companies having an aggregate listed company market capitalization of more than \$25 trillion, representing approximately 40% of the world's public market value.

⁵ See Comments on Reporting Threshold for Institutional Investment Managers, File No. S7-08-20 (July 10, 2020), available at: <https://www.sec.gov/comments/s7-08-20/s70820.htm>

⁶ The Society and NIRI have previously endorsed a two business day filing period. We continue to believe that such a disclosure window would be entirely feasible for 13F filers, given that current investment management technology enables managers to determine their precise positions at the end of each trading day and that the Commission recently mandated the settlement of trades within one business day. See Final Rule, Shortening the Securities Transaction Settlement Cycle, File No. S7-05-22 (Feb. 15, 2023). Nevertheless, we observe that the Commission recently settled on a five business day disclosure period for Schedule 13D filings as a compromise after hearing the views of filers. While our members would support earlier disclosure by both 13F and 13D filers, we believe that five business days would be a reasonable initial step in 13F modernization. Given that 13F filings typically include a table of position data for 13F securities and do not require any detailed narrative disclosure, there is no logistical reason investment managers cannot make their 13F filings within five business days.

I. The Commission Has Long Recognized the Value of 13F Transparency

For decades, the Commission has documented the benefits that Section 13(f) reporting has for both investors and public companies. Congress⁷ enacted Section 13(f) of the Securities Exchange Act of 1934 to increase the public availability of information regarding the securities ownership of institutional investors and to increase investor confidence in U.S. securities markets. When the final rules relating to the filing and reporting requirements of institutional investment managers were announced in 1979, the SEC made clear that “[t]he reporting system required by Section 13(f) is intended to create in the Commission a central repository of historical and current data about the investment activities of institutional investment managers, in order to improve the body of factual data available and to facilitate the consideration of the influence and impact of institutional investment managers on the securities markets and the public policy implications of that influence.”⁸

In 1999, when adopting rules requiring Form 13F filings via EDGAR, the Commission noted that “investors would find the information contained in Form 13F filings useful in tracking institutional investor holdings in their investments and . . . issuers . . . would find detail as to institutional investor holdings useful because much of their shareholder list may reflect holdings in ‘street name’ rather than beneficial ownership.”⁹

In 2010, the Commission’s Office of the Inspector General (“OIG”) reviewed the 13(f) filing requirements and cited several statements by the Commission in enforcement cases about the widespread usage of 13F data by SEC staff, investors, and other market participants. That report observed:

The information collected on Forms 13F has been and continues to be used by U.S. regulators, academics, the media and financial information distributors, and investors, and other U.S. equity markets participants, as intended by Congress. The Commission’s staff use Form 13F information for a variety of research, oversight, and enforcement purposes. The Commission’s staff also use Form 13F-based academic research, for

⁷ Since enacting Section 13(f) in 1975, Congress has expressed its intent to expand 13F ownership transparency. The Dodd-Frank Act included two such provisions: Section 951 (which directed the SEC to require 13F filers to report their “say on pay” votes via annual Form N-PX filings) and Section 929X (which directed the SEC to require the public disclosure of short sale data).

⁸ Final Rule, Filing and Reporting Requirements Relating to Institutional Investment Managers, Release No. 15461 (Jan. 5, 1979).

⁹ Exchange Act Release No. 40934 (Jan. 12, 1999), 64 FR 2843, 2844-45.

*example, to analyze the Commission's rulemaking initiatives under the federal securities laws.*¹⁰

The OIG review flagged various flaws with the 13F process, including the lack of a regular monitoring process by the SEC to ensure the accuracy and completeness of filings. This report included recommendations for addressing reporting gaps and improving the utility of 13F data for the investing public, such as increasing the types of securities covered by 13F disclosure to include derivatives and other hedging instruments,¹¹ improving the confidential treatment request process,¹² and requiring investment managers to report *average* holdings each quarter.¹³

Notwithstanding the significant value of 13F data to U.S. markets, the Commission surprised many investors and issuers in July 2020 by proposing rules (“2020 Proposal”) that would have exempted more than 4,500 filers (almost 90 percent of the total) from disclosure.¹⁴ In its rulemaking release, the Commission acknowledged that Form 13F data “is used for a wide variety of purposes” including different uses that developed after 13F filings became publicly available. “While Form 13F was originally designed to assist regulators and the public in understanding the effects of institutional equity ownership on the markets, the pool of users of the data has expanded to include academics, market researchers, the media, attorneys pursuing private securities class-action matters, and market participants (including institutional investors

¹⁰ See Office of Inspector General, Office of Audits, *Review of the SEC's Section 13(f) Reporting Requirements*, Report No. 480 (Sept. 27, 2010) (the “OIG Review”), at 6, citing *In re Full Value Advisors, LLC*, Release No. 34-61327 (Jan. 11, 2010), at 4.

¹¹ As the OIG report observed, “more sophisticated investment vehicles, such as derivatives or shares of open-end investment companies and mutual funds that might have been used to hedge equity securities, are not required to be reported on Form 13F. As a consequence, the public cannot obtain a complete picture of all significant investment activities of institutional investment managers.” OIG Review, at 25-26.

¹² The OIG Review also found that certain 13F filers were granted confidential treatment even though their applications did not meet the criteria for such treatment under Section 13(f). In some cases, filers received no determination from the Investment Management Division (“IM”) staff and thus received *de facto* confidential treatment for more than a year. OIG Review, at 23-24. The Society and NIRI believe that it would be helpful for OIG to conduct another review of the 13F program to ensure that the SEC is monitoring the accuracy of 13F filings, and that the IM staff has the resources it needs to respond to confidential treatment requests on a timely basis.

¹³ An investment manager that purchases a significant amount of Section 13(f) securities after the beginning of a quarter but disposes of them before the quarter end is not required to report those holdings, the OIG report explained. “As a consequence, the public does not have complete information about the activities of the institutional investment managers during a quarter and the effect of those activities on the market,” OIG noted. OIG Review at 26.

¹⁴ See Proposed Rule, Reporting Threshold for Institutional Investment Managers, File No. S7-08-20 (July 10, 2020)(“Proposed 2020 Rule”). That proposal would have significantly reduced Form 13F transparency by raising the 13(f) filing threshold by 35 times, from \$100 million to \$3.5 billion. NIRI and the Society agree with the dozens of commenters who argued in 2020 that the \$100 million threshold was set by statute and that the SEC requires authority from Congress to raise it.

themselves) who use the data to enhance their ability to compete,” the release explained. “The data can also assist individuals in making investment decisions, investment managers in managing assets, and corporate issuers of 13(f) securities interested in determining the beneficial holders of their publicly traded stock.”

Following overwhelming opposition from retail investors, institutional shareholders, mutual funds, public companies, trade associations, the national exchanges, and other market participants, the Commission never finalized its 13F proposal.¹⁵ A number of commenters, including NIRI and the Society, pointed out the various gaps in 13F reporting and suggested various reforms to improve the utility and timeliness of 13F data.

Over the past decade, the importance of 13F data has further increased as retail investing has soared,¹⁶ while public companies have ramped up their engagement with investors in response to—among other things—Dodd-Frank Act mandates (most notably to date, the required “say on pay” advisory votes), the rapid adoption of proxy access bylaws during the 2010s, the Commission’s 2021 universal proxy rule, and growing expectations from institutional shareholders. In response to these technological advances and governance trends, the Commission has recently moved to modernize several of its ownership reporting rules, adopting new rules to improve the timeliness and address disclosure gaps in Schedule 13D/13G filings,¹⁷ and to require monthly disclosure of short position data to the SEC.¹⁸ The Commission also proposed new rules to mandate the prompt disclosure of securities-based swap transactions.¹⁹

The one prominent ownership transparency rule that has not yet been modernized is Form 13F, notwithstanding the widespread usage of 13F data by investors, issuers, and other market participants. While the SEC has accelerated many of the disclosure deadlines that apply to public

¹⁵ According to an analysis by Goldman Sachs, 99% of the 2,262 letters submitted by the comment deadline opposed the 2020 Proposal. *See* “Goldman Sachs expects rejection of SEC plan to raise 13F reporting threshold,” Reuters (Oct. 19, 2020).

¹⁶ A Bloomberg Intelligence analysis in 2020 found that the percentage of retail investor trades had nearly doubled since 2010 and accounted for 19.5 percent of daily trading activity. *See* “Individual-Investor Boom Reshapes U.S. Stock Market,” *Wall Street Journal* (August 31, 2020), *available at*: <https://www.wsj.com/articles/individual-investor-boom-reshapes-u-s-stock-market-11598866200>

¹⁷ Final Rule, Modernization of Beneficial Ownership Reporting, 88 FR 76896 (Nov. 7, 2023).

¹⁸ Final Rule, Short Position and Short Activity Reporting by Institutional Investment Managers, 88 FR 75100 (Nov. 1, 2023).

¹⁹ Proposed Rule, Prohibition Against Fraud, Manipulation, or Deception in Connection With Security-Based Swaps; Prohibition Against Undue Influence Over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions, 87 FR 6652 (Feb. 4, 2022).

companies²⁰ and shortened the standard settlement cycle,²¹ investment managers are still allowed 45 days after the end of a quarter to report their ownership in 13F securities (or seek confidential treatment from the SEC staff). While a 45-day period might have made sense in the bygone days of paper filings when investors did not have email systems or computers and trades could take all week to settle, that delay makes no sense today. As many Society and NIRI members and listed companies will state, much of the data in 13F filings will be out of date after a 45-day delay, yet many companies still use it because they have few reasonably priced alternatives.^{22 23}

Given the evidence that investors, issuers, and other market participants are increasingly relying on 13F filings, it is imperative that the Commission revisit 13F and modernize the outdated 45-day reporting period. This will ensure that 13F disclosures meet critical market informational needs that have evolved in tandem with the rapid pace of the technological advancements and governance developments that have occurred since the late 1970s.

II. Investor Comment Letters Demonstrate Many Increased Uses for 13F Data

In response to the Commission’s Proposed 2020 Rule, hundreds of retail and institutional investors submitted comment letters that discussed how they use Form 13F filings to make investment decisions, refine their investing strategies, review the performance of investment professionals, and assess portfolio risks.

Data firms that analyze financial markets also shared their insights on 13F. In its comment letter, S&P Global outlined the many ways that investors, research analysts, and others use 13F data and the firm urged the Commission to consider the impact of the Proposed 2020 Rule on those market participants, including:

²⁰ See the discussion in Section V, *infra*.

²¹ The standard settlement cycle for securities transactions, which was five business days in 1979, was shortened to three business days in 1993 and then reduced to two business days in 2017. In February 2023, the Commission approved a one-business settlement cycle, which will take effect in May 2024. Final Rule, Shortening the Securities Transaction Settlement Cycle, 17 CFR Parts 232, 240, and 275 (Feb. 15, 2023).

²² Public companies can pay a fee to obtain a list of “non-objecting” beneficial owners (“NOBOs”) from Broadridge Financial, but that that list is cumbersome to use and does not include investors who are classified as “objecting” beneficial owners (“OBOs”). The Society and NIRI support modernizing the NOBO/OBO rules to allow issuers to communicate more efficiently with all of their shareowners. *See, e.g.*, Letter from Niels Holch, Executive Director, Shareholder Communications Coalition, to Vanessa Countryman, Acting Secretary, U.S. Securities and Exchange Commission (Apr. 8, 2019), available at <https://www.sec.gov/comments/4-725/4725-5335206-184008.pdf>.

²³ Some issuers hire stock surveillance firms to gain intra-quarter insights into their investors, but the cost of those services is beyond the reach of many smaller companies and 13F filings are necessary to verify the accuracy of those surveillance reports.

- *the general public, for whom 13F data helps create an environment of confidence in the markets;*
- *for investors and fund managers to be able to compare their monthly reports with the 13F data;*
- *for investors and fund managers to better evaluate their existing advisory relationship and/or identify other investment advisers that are more suited to their investment strategies or needs;*
- *for the sell-side to evaluate buy-side targets;*
- *to identify all owners of a given company and seek investor engagements;*
- *to evaluate potential investor activism;*
- *to evaluate who to partner with to start a campaign;*
- *to identify opportunities for individual investors; and*
- *to help legal departments to expedite their claims for affected parties.*²⁴

This widespread usage of 13F also is illustrated by EDGAR download data. A group of academics analyzed historical data over 14 years and found that Form 13F is the Commission’s sixth most highly downloaded form. They found that there were 289 million downloads of Form 13F between 2003 and June 2017.²⁵

A. 13F Filings Are a Critical Resource for Retail Investors

Form 13F data is particularly useful to retail investors,²⁶ who do not have access to multiple sell-side analyst reports and other resources available to investment professionals, when deciding which companies to invest in. While many retail investors will consider an issuer’s performance

²⁴ Comment Letter by S&P Global on File No. S7-08-20 (Sept. 28, 2020), available at: <https://www.sec.gov/comments/s7-08-20/s70820-7859997-223880.pdf>

²⁵ See Comment Letter by Mary Barth, Graduate School of Business, Stanford University; Travis Dyer, SC Johnson College of Business, Cornell University; Wayne Landsman, Kenan-Flagler Business School, University of North Carolina; and Daniel J. Taylor, The Wharton School, University of Pennsylvania on File No. S7-08-20 (Sept. 16, 2020), available at: <https://www.sec.gov/comments/s7-08-20/s70820-7793920-223568.pdf>

²⁶ As one individual shareholder recently explained, “The 13f filings rule stands as an incredible boon to the little investor who uses it to reduce the cost and time put into stock research by being able to evaluate professional portfolios in a timely way. It is an immense boost of confidence to a small investor to see that several professionals bought a stock they are interested in.” See Comments by Hussam Eldin Ahmed Elsheikh on File No. S7-08-20 (May 14, 2023), available at: <https://www.sec.gov/comments/s7-08-20/s70820-188839-358825.htm>

and SEC filings, they also will look to 13F data to see the buying (or selling) by well-known investment managers and companies to confirm their investment ideas. In their letters opposing the 2020 Proposal, many individual investors instead called for lowering the threshold and increasing 13F transparency.

Morningstar, a provider of research to retail shareholders, observed in its comment letter that 13F filings “are the only accurate source of ownership information freely available to individual investors.”²⁷ Morningstar further explained that 13F filings also are used by individual investors to help inform their decisions about which investment managers to hire.

James Angel, a finance professor at Georgetown University, made a similar observation about how 13F filings help individual investors evaluate the performance of smaller institutional managers. “By examining 13F filings, potential investors can see whether the actual investment history of a manager is consistent with its marketing material,” Angel wrote in his comment letter.²⁸ “Eliminating 13F transparency for 4,500 investment managers will also make it harder for potential investors to detect fraud by investment managers.”

B. Institutions Report that the Benefits of 13F Data Outweigh the Costs

13F data also is widely used by investment advisers, fund managers, and other institutions in their efforts to manage risk, monitor activism, and achieve better returns for their clients. As the Investment Adviser Association (“IAA”) observed in its comment letter, “The benefits provided by Form 13F data have evolved over time and are many. Today, Form 13F information is extremely valuable to a wide array of investment advisers and others.”²⁹

²⁷ Letter of Aron Szapiro, Head of Policy Research, Morningstar Inc., on File No. S7-08-20 (Sept. 29, 2020), at 3, available at: <https://www.sec.gov/comments/s7-08-20/s70820-7860076-223916.pdf>

²⁸ See Comment Letter by James Angel, Associate Professor of Finance, McDonough School of Business, Georgetown University, on File No. S7-08-20 (Sept. 29, 2020), available at: <https://www.sec.gov/comments/s7-08-20/s70820-7860404-223966.pdf>

²⁹ The IAA letter detailed examples of the many uses for 13F data and noted that 13F filings are superior to other SEC sources: “Traditional asset managers, for example, find the information useful in managing actively managed strategies, particularly in the small and mid-cap space. Sponsors to closed-end funds rely on Form 13F reports to monitor activist shareholder activity (before reporting persons reach the beneficial ownership or investment levels that trigger Schedule 13D, Schedule 13G, or Form N-PORT filings). Form 13F gives more information about the diversity of shareholder ownership than data from these other sources. Exchange-traded funds utilize Form 13F data to help satisfy their regulatory obligations, understand their shareholder base, determine how concentrated ownership is in their shares, and provide educational materials and other services to their shareholders.” Letter from Gail C. Bernstein, General Counsel, Investment Advisor Association, on File No. S7-08-20 (Sept. 29, 2020), at 3, available at: <https://www.sec.gov/comments/s7-08-20/s70820-7859973-223872.pdf>

The Investment Company Institute (“ICI”) also noted “the many benefits of 13F data, which market participants and the public have come to rely on over the years.”³⁰ In its 2020 letter, the ICI explained that 13F data is a “critical source” of data for closed-end funds and their boards to monitor the ownership of their shares, including the activity of activist investors. These closed-end funds also use this data when communicating with their shareholders, soliciting proxies, and trying to meet quorum requirements. ICI further pointed out that exchange traded funds use 13F data to meet their regulatory requirements, to engage with its investors on proxy proposals, and to inform their marketing and educational materials.

Most notably, a number of investment managers, including those who would have been exempted from 13F filings under the Commission’s 2020 Proposal, specifically argued that the benefits of transparency outweighed the costs of reporting.³¹ For instance, Julia Mord of the Tulane University Investment Management Office, who helped oversee an \$1.5 billion endowment, shared what she had learned about the costs and benefits of Form 13F from the investment managers who manage her university’s money.

*We speak with our managers regularly, and even those firms with small teams and limited assets have managed very successfully to comply with this SEC requirement as part of their regular-way business. Investment managers already have the information in the 13F at their fingertips and not once in my 15 years as an allocator have I heard a manager complain that the 13F requirement created undue burden or expense. . . . As an institutional investor who pays these costs regularly, we welcome the burden of these costs in exchange for the transparency this filing provides us.*³²

Similarly, John Cheshire, a trustee with the Kentucky Retirement Systems, observed in his comments on the Commission’s 2020 Proposal: “It is our belief that the potential harm in reducing market transparency far outweighs any potential savings, in a magnitude that makes this

³⁰ Comment Letter by Susan Olson, General Counsel, Investment Company Institute, on File No. S7-08-20 (Sept. 29, 2020), available at: <https://www.sec.gov/comments/s7-08-20/s70820-7860142-223928.pdf>

³¹ The direct costs of 13F filings are modest and appear to be substantially below the estimates detailed in the Proposed 2020 Rule. ACN, Inc., which purports to be the largest provider of Form 13F reporting solutions in the world, reported that it charges clients only \$125 a quarter for a 13F filing. ACN explained that most investment firms do not need compliance attorneys or computer programmers and can “produce the required 13F information from specific modules in standard portfolio management software packages or custodian data platforms.” Comment Letter from Russell P. Moenich, Executive Chairman, ACN Inc., on File S7-08-20 (Sept. 20, 2020), available at: <https://www.sec.gov/comments/s7-08-20/s70820-7757531-223233.pdf>.

³² See Comment Letter from Julia G. Mord, Interim Deputy Chief Investment Officer, Tulane Educational Fund on File No. S7-08-20 (Sept. 28, 2020), available at <https://www.sec.gov/comments/s7-08-20/s70820-7843271-223777.pdf>

proposed change disastrous to confidence in market structure and fair access to information for all investors.”³³

III. 13F Filings Foster Greater Public Company Engagement and Capital Formation

As NIRI, the Society, the NYSE, and numerous other organizations noted in their comment letters in 2020, 13F data is critically important to public companies, helping them to engage with existing investors, monitor activism, and raise capital from new investors.

As the Society explained in its 2020 letter, 13F data is essential to help U.S. public companies to track their “street name” shareholders,³⁴ which make up the vast majority of their investors. “In significant part because of public companies’ limited visibility to their shareholders’ identities, Form 13F filings today make up the primary data input for their ‘shareholder lists.’ These disclosures provide the only reliable means for market participants to understand the ownership profile of an issuer’s securities and, in the view of the Society’s membership, are essential to the functioning, growth, and clarity of the U.S. securities markets,” the Society noted.³⁵

A. 13F Filings Help Companies Plan Their Engagement Activities

Other commenters stressed the importance of 13F data in informing issuers’ engagement with their investors and helping companies to allocate scarce executive time for shareholder meetings. In its comment letter, which was joined by 381 listed companies, NYSE explained how issuers use 13F data to prioritize engagement:

*As corporate issuers work to engage with shareholders, investor relations officers, CFOs, and CEOs constantly manage interest from the investment community asking for their time in phone calls or in-person meetings with senior management. The large volume of these requests makes it impossible for a company to accept all invitations and still have time to effectively run its business. As a practical matter, decisions regarding shareholder engagement meetings are made based on the overall nature of the investment manager, typically as determined by the investor relations officer, and almost always based on 13F data.*³⁶

³³ See Comments of John Cheshire, III, CIO, Asio Capital and Trustee Kentucky Retirement Systems on File No. S7-08-20 (July 17, 2020), available at: <https://www.sec.gov/comments/s7-08-20/s70820-7436320-220798.htm>.

³⁴ In 2007, the Commission noted that 85% of exchange-traded shares were held by brokers and other securities intermediaries. See Roundtable on Proxy Voting Mechanics, Topic One: Share Ownership and Voting (2007).

³⁵ Letter of James G. Martin, General Counsel, Society for Corporate Governance, on File S7-08-20 (Sept. 29, 2020), available at: <https://www.sec.gov/comments/s7-08-20/s70820-7860050-223909.pdf>.

³⁶ Comment Letter of Chris T. Taylor, Vice President, Listings & Services, NYSE Group (Sept. 21, 2020)(“2020 NYSE Letter”), available at: <https://www.sec.gov/comments/s7-08-20/s70820-7797941-223589.pdf>

These engagement activities have become increasingly important over the past decade as institutions (including “passive” fund managers) have taken a more active role in communicating their views on corporate strategy, capital allocation, and corporate governance issues. As a result of Section 951 of the Dodd-Frank Act, a majority of U.S. companies hold annual proxy votes on executive compensation and need to allocate board time to investment managers who have questions about the company’s pay versus performance alignment. Many institutions also have increased their engagement over climate risk, other environmental concerns, human capital, board diversity, and other matters. While a particular company’s large index investors may not change appreciably, many companies see significant turnover in their other institutional shareowners (particularly by more actively managed funds) each year and thus need timely 13F data to be able to engage effectively with these investors.

B. Issuers Rely on 13F Data to Monitor and Engage With Activists

In addition to ongoing engagement, 13F data also is critical to help issuers identify activist fund managers before they cross the 5 percent threshold that would trigger a Schedule 13D filing.³⁷ As the National Association of Manufacturers (“NAM”) observed in its 2020 comment letter:

*Quarterly Form 13F reports grant businesses insights into activist investors that take a position in their stock and give them valuable time to consider how best to respond to potential activist activity. Though 13F filings are published well after the end of the quarter (up to 135 days after an activist first buys stock if they purchase on the first day of the quarter), they are still often the first signal a business receives that an activist has built a position in the company’s stock. The infrequent and delayed nature of 13F filings already limits issuers’ ability to respond to activists, and eliminating their disclosure obligations entirely would leave companies flying blind in the event of activist activity.*³⁸

While the Commission has modernized the 13D/13G rules (which the Society and NIRI strongly supported), public companies still have limited (and delayed) visibility into activists that are building positions that have not reached 5 percent.³⁹ Notwithstanding the new 13D/G rules, an

³⁷ Three lawyers from Wachtell, Lipton, Rosen & Katz made a similar observation, noting that Form 13F “is often the primary means by which investors, companies and other market participants first learn or verify that an activist hedge fund is accumulating or has accumulated a significant (but less than 5%) position in a target company’s stock.” Adam O. Emmerich, David M. Silk, and Sabastian V. Niles, Wachtell Lipton, “Going Dark: SEC Proposes Amendments to Form 13F,” *Harvard Law School Forum on Corporate Governance* (July 19, 2020), available at: <https://corpgov.law.harvard.edu/2020/07/19/going-dark-sec-proposes-amendments-to-form-13f/>

³⁸ Comment Letter from Chris Netram, Vice President, Tax and Domestic Economic Policy, National Association of Manufacturers, on File No. S7-08-20 (Sept. 29, 2020) (“NAM Letter”), available at: <https://www.sec.gov/comments/s7-08-20/s70820-7860405-223965.pdf>

³⁹ Financial Executives International, which represents chief financial officers, controllers, and other officers, observed that companies rely “heavily” on 13F data to track and respond to their shareholders: “Because Schedule 13D is filed only by shareholders with greater than 5 percent ownership of a voting class of a

investment manager can still buy a 4.99 percent stake on Jan. 2 and not have to report that position until May 15 (assuming the investment manager does not obtain confidential treatment to further postpone disclosure).

The most effective ways to close this disclosure gap would be to increase the frequency of 13F filings and to reduce the 45-day filing period. Although Congressional authorization would be needed to mandate monthly filings, the Commission already has authority under Section 13(f) to reduce the 45-day period.⁴⁰ Such a reform would provide more timely notice to companies about activists that are building significant stakes, which is increasingly important given the robust levels of hedge fund activism and the Commission’s 2021 universal proxy rules, which make it easier for activists to obtain board representation.

C. 13F Disclosures Help Smaller Companies Attract Capital

13F data also is essential to help mid-size, small, and micro-cap companies attract capital by identifying prospective institutional investors. Investor relations officers at these companies routinely review 13F data to see which fund managers are investing in peer companies and thus may be inclined to hear their company’s investment thesis.

The Biotechnology Innovation Organization (“BIO”), which represents many small biotech companies, explained the role of 13F data in supporting this outreach process in its 2020 comment letter:

Innovation is a capital intensive process, and the idiosyncrasies of investor mandates and risk limit the opportunity set, requiring a great degree of effort in understanding the landscape and pursuing the right investors at the right time who can understand the scientific pursuit, appreciate the goals, and have the necessary risk tolerance for each stage of growth. Ultimately, every company wants long-term investors, such as financial institutions that package shares into mutual funds and exchange-traded funds. But these

company’s equity securities, public companies rely most heavily on quarterly Form 13F filings to gather the ownership information of smaller shareholders whose needs may otherwise be overlooked.” Letter of Prat Bhatt, Chairman, Committee on Corporate Reporting, Financial Executives International, on File No. S7-08-20 (Sept. 29, 2020), available at: <https://www.sec.gov/comments/s7-08-20/s70820-7860427-223972.pdf>.

⁴⁰ Section 13(f) provides in part: “(1) Every institutional investment manager . . . which exercises investment discretion with respect to accounts holding equity securities of a class described in subsection (d)(1) of this section having an aggregate fair market value on the last trading day in any of the preceding twelve months of at least \$100,000,000 or such lesser amount (but in no case less than \$10,000,000) as the Commission, by rule, may determine, shall file reports with the Commission in such form, for such periods, and at such times after the end of such periods as the Commission, by rule, may prescribe, but in no event shall such reports be filed for periods longer than one year or shorter than one quarter.” (emphasis added)

*investors are earned over time with consistent execution and proper diligence. This entire process begins and ends with 13(f) filing data.*⁴¹

Given that capital formation is a component of the SEC’s tripartite mission, the Commission should consider the potential impact on smaller companies’ capital-raising activities when it evaluates how to modernize 13F.⁴² Instead of reducing transparency, the Commission should consider policy changes that would improve the utility, completeness,⁴³ and timeliness of 13F filings. A reduction in the 13F filing period from 45 calendar days to five business days would certainly help these smaller companies grow by providing them with more current data about these potential investors.

Finally, other commenters noted that 13F data can be helpful for other business purposes, such as evaluating partnerships and M&A opportunities.⁴⁴

IV. The 2020 Comment Letters Demonstrate Broad Investor and Issuer Support for Increasing 13F Transparency

While the vast majority of the 2020 comment letters focused on the reduction in market transparency that would have resulted from the proposed 35-times increase in the statutory filing threshold, a number of investor advocates, business groups, and other commenters highlighted the well-known disclosure gaps under the current 13F rules and urged the Commission to take steps to expand transparency by requiring more timely filings and expanding disclosure to include OTC securities, as well as the disclosure of short positions, a reform that NIRI and NYSE supported in a 2015 rulemaking petition.⁴⁵

In its 2020 comment letter, the Consumer Federation of America concluded: “In short, there is a strong case to be made that Section 13(f) reporting requirements are in need of an update to close

⁴¹ Comment Letter from Carlo Passeri, Director of Capital Markets and Financial Services Policy, Biotechnology Innovation Organization, on File No. S7-08-20 (Sept. 14, 2020) (“BIO Letter”), *available at*: <https://www.sec.gov/comments/s7-08-20/s70820-7773212-223397.pdf>

⁴² In its comment letter, BIO warned that raising the 13F threshold to an inflation-adjusted level of \$450 million would “eliminate 50% of healthcare-specialist fund managers that are vital to emerging biotechnology companies.” BIO Letter at 2.

⁴³ For instance, expanding the official list of 13F filings to include OTC securities would provide micro-cap companies more visibility into managers who are investing in their peers.

⁴⁴ According to the NAM, Form 13F information allows companies “to understand the differences between their and a potential partner’s shareholders and to identify any notable overlap.” *See* NAM Comment Letter, *supra* note 38.

⁴⁵ NYSE-NIRI Rulemaking Petition on Short-Position Disclosure, File No. 4-689 (Oct. 7, 2015)(“2015 NYSE-NIRI Petition”). Nasdaq filed a similar petition in December 2015. Edward S. Knight, Executive Vice President, General Counsel and Chief Regulatory Officer of Nasdaq, Rulemaking Petition: Request to require disclosure of short positions in parity with required disclosure of long positions, File No. 4-691 (Dec. 7, 2015).

substantial gaps in information about the investment activities of institutional investment managers and their impacts on both securities markets and corporate issuers.”⁴⁶ The consumer organization cited the reforms suggested by OIG in 2010 and NIRI’s rulemaking petitions.

Likewise, Americans for Financial Reform (“AFR”), which represents 200 consumer, civic, labor, and faith-based groups, cited the 2013 rulemaking petition by NIRI, Society, and NYSE, as well as several OIG recommendations and asked the SEC to expand 13F reporting to capture more information.⁴⁷

In a joint letter, the Communication Workers of America and the American Federation of Teachers referred favorably to the 13F reforms requested in the 2013 and 2015 rulemaking petitions. “These proposals quite plainly went in the opposite direction of [the Commission’s 2020] proposal, and sought to enhance market efficiency by improving market transparency. They would have shortened the reporting deadline and expanded the types of investment activities subject to disclosure. Each of these requests would enhance market efficiency by providing investors with more timely and pertinent information about the actual size and structure of investment activities,” the labor groups wrote.⁴⁸

Asset manager Rock Creek Group was among the commenters that noted the delay before 13F filings are made public and called for expanding 13F disclosure to include all positions, including short transactions.⁴⁹

In its 2020 comment letter, FCLTGlobal, an organization of more than 50 asset owners, asset managers, and corporations that promotes long-term investment and business decision-making,

⁴⁶ Comment Letter from Barbara Roper, Director of Investor Protection, Consumer Federation of America, on File No. S7-08-20 (Sept. 16, 2020), available at: <https://www.sec.gov/comments/s7-08-20/s70820-7777971-223451.pdf>.

⁴⁷ Comment Letter from the Americans for Financial Reform Education Fund on File No. S7-08-20 (Sept. 29, 2020), available at: <https://www.sec.gov/comments/s7-08-20/s70820-7860055-223899.pdf>

⁴⁸ Comment Letter from Shane Larson, Senior Director for Government Affairs and Policy, Communications Workers of America, and Sarah Tammelleo, Assistant to the President and Director of Research and Strategic Initiatives, American Federation of Teachers, on File No. S7-08-20 (Sept. 29, 2020), available at: <https://www.sec.gov/comments/s7-08-20/s70820-7860397-223962.pdf>

⁴⁹ In its comment letter, Rock Creek explained: “[W]e believe that the need for increased transparency for investors outweighs concerns related to any administrative burden caused by the 13F filing requirements. In fact, many of our investors, recognizing the long period of lag before the 13F disclosures are made public, have often commented that the Form 13F should be expanded to include all positions, including short positions to improve transparency.” Comment Letter from Sherri Rossoff, Managing Director, Rock Creek Group (Sept. 17, 2020), available at <https://www.sec.gov/comments/s7-08-20/s70820-7787361-223531.pdf>

urged the Commission to shorten the 45-day disclosure period, noting that “such reporting delay is no longer needed in our electronically advanced capital markets.”⁵⁰

Investment research firm Morningstar specifically endorsed the 13F reforms proposed by NIRI, the Society, NYSE, and Nasdaq, noting in its comment letter that “[m]arket transparency increases market efficiency, which ultimately lowers costs for all investors. These include transparency-boosting elements, such as the reduction of an outdated 45-day reporting period, as well as the inclusion of short positions and other types of securities like derivatives.”⁵¹

In addition, a number of industry and corporate groups voiced support on behalf of their members for increasing 13F transparency. In a joint letter, the Edison Electric Institute and the American Gas Association endorsed the following reforms: “increasing the frequency of the Rule 13f-1 filings to monthly, reducing the filing period from 45 days to 5 days, and requiring full disclosure of derivative positions.” The groups also noted that Section 16 corporate officers, “a significantly larger group of less sophisticated reporting persons,” are able to make Form 4 filings within two business days and that filing 13Fs within that same period would be achievable.⁵²

Likewise, the National Mining Association, observed in 2020 that the SEC “failed to heed the calls of investors and companies to truly modernize this reporting program by reducing the reporting period from 45 days to 15 days, changing the reporting frequency to monthly, or requiring the disclosure of short positions, and other reforms that would provide real benefits to publicly traded companies and other stakeholders.”⁵³

In its 2020 letter, NYSE noted that “it and others had long advocated for modernization of the length of the 45-day delay period under Rule 13f-1 for submission of data by institutional

⁵⁰ In its comment letter, FCLTGlobal observed: “In today’s world of electronic trading and T+1 settlement, investors know their positions near instantaneously. The idea of a long reporting lag to allow time to compile the required information is outdated. Furthermore, this 45-day period is in practice a 135-day period if we account for the 90-day long quarter. Thus, we urge the Commission to consider shortening this period to better reflect the current investment environment.” Comment Letter from Sarah Keohane Williamson, Chief Executive Officer, FCLTGlobal, on File No. S7-08-20 (Sept. 9, 2020), *available at*: <https://www.sec.gov/comments/s7-08-20/s70820-7753749-223200.pdf>.

⁵¹ Letter of Aron Szapiro, Head of Policy Research, Morningstar Inc., on File No. S7-08-20 (Sept. 29, 2020), at 2, *available at*: <https://www.sec.gov/comments/s7-08-20/s70820-7860076-223916.pdf>.

⁵² Comment Letter from Richard McMahon, Senior Vice President, Energy Supply & Finance, Edison Electric Institute, and Lori Traweek, Chief Operating Officer, American Gas Association, on File No. S7-08-20 (Sept. 15, 2020), *available at*: <https://www.sec.gov/comments/s7-08-20/s70820-7777986-223462.pdf>

⁵³ Comment Letter of Tawny A. Bridgeford, Deputy General Counsel & Vice President, Regulatory Affairs, National Mining Association, on File No. S7-08-20 (Sept. 29, 2020), *available at*: <https://www.sec.gov/comments/s7-08-20/s70820-7843285-223806.pdf>

investor holdings,” and lamented the SEC’s failure “to address the long overdue deficiencies in the timeframe for reporting Form 13F data.”⁵⁴

In light of this extensive record of support from both investors and issuers for greater 13F transparency, we urge the Commission to undertake a new rulemaking that would improve the timeliness and usefulness of Form 13F filings.

V. The 45-Day Reporting Period Remains an Outlier Given the SEC’s Efforts to Accelerate Other Disclosure Deadlines

Finally, we ask the Commission to consider that the archaic 45-day filing period for Form 13F managers has remained unchanged since 1979. Over the past 45 years, the Commission has acted repeatedly to accelerate disclosure deadlines for corporate issuers and officers with the intent to provide more timely information to investors and increase public confidence in the U.S. financial markets.

In response to the Sarbanes-Oxley Act, the Commission moved quickly in 2002 to shorten the Form 4 deadline for executive stock trades to two business days; the disclosure period had been 10 days after the end of each month.⁵⁵ In discussing the rulemaking’s costs and benefits, the SEC acknowledged that “[c]osts may arise because reporting persons will be required to file Form 4 significantly more quickly after a transaction, and potentially more frequently because Form 4 no longer will be a monthly form.” However, the SEC concluded that “[m]aking this information available to all investors on a more timely basis should increase market transparency, which will likely enhance market efficiency and liquidity.”

In 2004, the SEC adopted “real-time issuer disclosure” amendments to Form 8-K that reduced the filing period to four business days, added eight new items that would trigger a filing, and transferred two items from quarterly filings to 8-K.⁵⁶ In discussing the benefits of more timely and complete disclosure, the Commission observed that “[m]odern computer and communications systems enable current disclosure to be analyzed and incorporated into the price of a security quickly. By moving our rules towards a system emphasizing current reporting, our markets may become more effective as price discovery mechanisms during periods between periodic reports.” The Commission further opined: “In addition, these amendments should enhance investor confidence in the financial markets. The requirement of enhanced, timely

⁵⁴ 2020 NYSE Letter, *supra* note 36.

⁵⁵ *See, e.g.*, Final Rule, Ownership Reports and Trading by Officers, Directors and Principal Security Holders, 67 FR 56461 (Sept. 3, 2002).

⁵⁶ Final Rule, Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date, 69 FR 15593 (March 16, 2004). The previous 8-K filing period had been five business days or 15 calendar days, depending on the item.

disclosure should raise investors' expectations regarding the amount and timing of information that reporting companies must make available to the public.”

In 2009, the Commission adopted proxy disclosure enhancements that directed public companies to disclose preliminary vote results from their annual meetings in Item 5.07 of Form 8K within four business days instead of waiting until their next quarterly filing.⁵⁷ In discussing this change, the SEC emphasized how more timely disclosure would benefit investors and that technological advances had made it easier for companies to comply. As the final rulemaking release explained:

Under our prior disclosure requirements, it could be a few months before voting results are disclosed in a Form 10-Q or 10-K. Often, matters submitted for a shareholder vote at an annual or special meeting involve issues that directly impact shareholder interests, such as the election of directors, changes in shareholder rights, investments or divestments, and capital changes. The delay between the end of an annual or special meeting of shareholders and when the voting results of the meeting are disclosed in a Form 10-Q or 10-K can make the information less useful to investors and the markets. We also understand that technological advances in shareholder communications and the growing use of third-party proxy services have increased the ability of companies to tabulate vote results and disseminate this information on a more expedited basis.⁵⁸

In these prior rulemakings, the SEC opted to accelerate deadlines to improve the timeliness of disclosure for the benefit of investors; the Commission also cited increased efficiency and the importance of enhancing investor confidence in the financial markets. As the SEC observed with Item 5.07, delay in disclosure can make information less useful to investors. In response to concerns about the potential burdens on filers, the Commission pointed to technological advances that allowed both companies and investors to process information more quickly.

While these accelerated disclosure rules for issuers were updated more than a decade ago, the same underlying rationale – the need to provide more timely information to foster greater confidence in the market – also applies to Form 13F filings.⁵⁹ Unlike in 1979, investment

⁵⁷ Final Rule, Proxy Disclosure Enhancements, 74 FR 68334 (Dec. 23, 2009).

⁵⁸ *Id.* at 68350.

⁵⁹ Some opponents of 13F reform have claimed that reducing the 45-day period would lead to “front-running” and the copying of trading strategies by other managers. This concern appears overblown given the ability of most investment managers to strategically complete their planned trades over 90 days. In addition, a review of 5,262 Form 13Fs filed for the first quarter of 2020 by Fintuitive, a financial research firm, found that 44 percent were filed at least one week prior to the regulatory deadline. “If either front-running or copycatting were issues for these filers, one would have expected them to file on the last possible day,” noted Fintuitive President Rohit Sood. “This is clearly not the case.” Comment Letter of Rohit Sood, President, Fintuitive LLC, on File No. S7-08-20, available at: <https://www.sec.gov/comments/s7-08-20/s70820-7860075-223903.pdf>

managers today have the technological tools⁶⁰ (along with faster trade settlements) to quickly gather the data they need for these filings.

Given the undeniable importance of 13F data to investors, issuers, and other market participants, it is time for the Commission to start the process of modernizing its 13F disclosure regime. A modest initial step would be to propose a rulemaking to address the pre-digital-age reporting period.⁶¹ In light of the more than 2,200 comments provided in 2020, the 2010 OIG Review, and the three earlier 13F-related rulemaking petitions, the Commission already has sufficient information to start this process.

VI. Conclusion

In conclusion, the Society, NIRI and the NYSE ask the Commission to initiate a new 13F rulemaking process that would reduce the quarterly disclosure period from 45 calendar days to five business days. We also encourage the Commission to seek public comment on other potential reforms, such as those detailed in the Office of the Inspector General's 2010 Review,⁶² that would increase the utility and completeness of 13F filings.

To foster more timely engagement between companies and activist investors, we also ask the SEC to consider modifying the 13F confidential treatment process as follows: If the SEC Investment Management Division staff grants a confidential treatment request to a 13F filer to delay disclosure of a significant position (such as greater than 1% of a company's shares outstanding) in a company's securities, the SEC staff should privately inform the company's designated contact person (*i.e.*, the investor relations officer, corporate secretary, or general counsel) that such a request had been granted to a filer.⁶³ The company would be required to treat

⁶⁰ According to WhaleWisdom, a consolidator of 13F information, "changes in technology have given managers the ability to file Form 13F reports much easier and with significantly less advance preparation time, thereby reducing the direct costs involved with filings." Comment Letter of Daniel Collins, President, WhaleWisdom, on File No. S7-08-20 (Sept. 29, 2020), *available at*: <https://www.sec.gov/comments/s7-08-20/s70820-7860238-223968.pdf>.

⁶¹ NIRI and the Society support legislation to amend Section 13(f) to authorize the SEC to mandate monthly reporting by 13F filers. The U.S. House Financial Services Committee approved such a bill, HR 4618, in July 2021, but it was not considered by the Senate. Given the unpredictable pace of legislation in Congress, we urge the Commission not to wait for legislation and instead use its existing authority to improve the timeliness and utility of 13F filings.

⁶² The Society and NIRI also recommend that OIG complete a new review of the agency's 13F program to assess the Commission's current efforts to ensure the accuracy of 13F filings and the ability of the Investment Management staff to adequately review existing confidential treatment requests.

⁶³ The Society and NIRI believe that activist managers should not be allowed to use the 13F confidential treatment process to conceal their efforts to accumulate large (but below the 13D threshold) positions and then ambush a public company and pressure its board to agree to concessions that may not be consistent with long-term shareholder value. Providing private notification to the relevant company when a confidential treatment request is granted to delay public disclosure of a significant position would be a reasonable compromise that would balance the interest of the activist who wishes to secretly acquire the company's shares cheaply against the

that notification as confidential and material non-public information (“MNPI”) and could only use that information for engagement purposes.

Thank you for your consideration of our views on 13F modernization.

Sincerely,



C. Edward (Ted) Allen
Vice President, Policy & Advocacy
Society for Corporate Governance



Matthew D. Bruschi
President and CEO
National Investor Relations Institute



Chris Taylor
Vice President, NYSE Global Head of Advisory
New York Stock Exchange

cc: The Honorable Gary Gensler
The Honorable Hester M. Peirce
The Honorable Caroline A. Crenshaw
The Honorable Mark T. Uyeda
The Honorable Jaime Lizarraga
Erik Gerding, Director, Division of Corporation Finance
Natasha Vij Greiner, Director, Division of Investment Management

interest of the company that opts to engage thoughtfully with the activist before an expensive proxy contest erupts.